

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

EARNESTINE DAVIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:08CV01969 CAS/FRB
	)	
MICHAEL J. ASTRUE,	)	
Commissioner of Social Security,	)	
	)	
Defendant.	)	

**REPORT AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

This cause is on appeal from an adverse ruling of the Social Security Administration. Presently pending before the Court is defendant's Motion to Reverse and Remand (Docket No. 25/filed September 28, 2009). All pretrial matters were referred to the undersigned United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b), for appropriate disposition.

Plaintiff Earnestine Davis ("plaintiff") filed her Complaint on December 19, 2008. (Docket No. 1.) Instead of filing an answer, defendant moved to reverse and remand the case to the Social Security Administration because the claim file had been lost, making it impossible to prepare a proper certified record. (Docket No. 10.) On March 24, 2009, the undersigned issued a Report and Recommendation, recommending that the matter be remanded to the Commissioner, and on April 8, 2009, this Court adopted that Report and Recommendation, and entered an Order of

Remand. (Docket Nos. 12 and 13.) On June 16, 2009, upon the defendant's motion, this Court entered an order reopening the case, and defendant's answer was filed. (Docket Nos. 14-17.) Plaintiff subsequently filed a brief in support of her Complaint. (Docket No. 20.)

In the instant Motion to Reverse and Remand, defendant avers that the Appeals Council has agreed that remand is appropriate in this case. Specifically, defendant avers that, upon receipt of this Court's remand order, the Appeals Council will remand this case to the Administrative Law Judge with direction to obtain vocational expert testimony at step five regarding plaintiff's ability to work.<sup>1</sup> Defendant avers that remand would ensure that the Commissioner properly considers plaintiff's claim. Defendant therefore requests that this matter be remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration. Plaintiff has responded to defendant's motion, stating that she has no objection.

A review of the defendant's motion to remand shows it to be well taken. See, e.g., Buckner v. Apfel, 213 F.3d 1006, 1009-11 (8th Cir. 2000).


Accordingly,

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<sup>1</sup>Defendant notes the Eighth Circuit's decision in King v. Astrue, 564 F.3d 978 (8th Cir. 2009), which held that use of the medical-vocational guidelines is inappropriate when the claimant has a severe mental impairment.

**IT IS HEREBY RECOMMENDED** that defendant's Motion to Reverse and Remand (Docket No. 25) be granted.

**IT IS FURTHER RECOMMENDED** that the decision of the Commissioner be reversed and that this cause be remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration of plaintiff's claims.

  
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Frederick R. Buckles  
UNITED STATES MAGISTRATE JUDGE

Dated this 1<sup>st</sup> day of October, 2009.